

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DERRICK FONTAINE,

Plaintiff,

v.

9:04-CV-0049
(NAM/RFT)

M. HARRISON, Corrections Officer, Clinton Correctional
Facility; ROBERT HARRIS, Corrections Officer, Clinton
Correctional Facility,

Defendants.

APPEARANCES:

DERRICK FONTAINE
Plaintiff, *pro se*
99-A-1770
Southport Correctional Facility
P.O. Box 2000
Pine City, New York 14871

NORMAN A. MORDUE, United States District Judge

ORDER

By Decision and Order filed January 30, 2004, plaintiff Derrick Fontaine was directed to file an amended complaint if he wished to avoid dismissal of this action. Dkt. No. 4.

Plaintiff filed a motion for reconsideration of the January Order, which was denied. Dkt. No. 7 (the "April Order").¹ Rather than filing an amended complaint, plaintiff sought leave to file an interlocutory appeal of the April Order. Dkt. No. 8. Upon the denial of that request (Dkt. No. 9), plaintiff appealed to the United States Court of Appeals for the Second Circuit. Dkt. No. 10.

By mandate issued April 4, 2005, plaintiff's appeal was dismissed by the Second

¹ Plaintiff has two other actions pending in the Northern District. *Fontaine v. Goord*, 9:03-CV-1444 (LEK/GJD); *Fontaine v. Hicks*, 9:03-CV-1484 (LEK/DRH).

Circuit because a final order has not been issued by this Court. Dkt. No. 12. The Clerk of the Court has returned the file to the Court for review.

In reviewing this matter, the Court has been guided by the direction given by the Second Circuit in its recent decision in *Phillips v. Girdich*, ___ F.3d ___, 2005 WL 1154194 (2d Cir. May 17, 2005). In *Phillips*, the Second Circuit reaffirmed that the pleadings of *pro se* litigants should be “construed liberally,” and that held that technical pleading irregularities should be excused, provided that they neither “undermine the purpose of notice pleading nor prejudice the adverse party.” *Id.* at * 3 (citations omitted). Therefore, upon further consideration of plaintiff’s original pleading, the Court finds that the complaint, as drafted, substantially complies with the pleading requirements of the Federal Rules of Civil Procedure, and is hereby accepted.

WHEREFORE, it is hereby

ORDERED, that the Clerk issue summonses and forward them, along with copies of the complaint, to the United States Marshals Service for service upon the defendants, together with a copy of this Order.² The Clerk shall also forward a copy of the summons and amended complaint to the Office of the New York State Attorney General, together with a copy of this Order, and it is further

ORDERED, that a formal response to plaintiff’s complaint be filed by the defendants or their counsel as provided for in the Federal Rules of Civil Procedure subsequent to service of process on the defendants, and it is further

ORDERED, that all pleadings, motions and other documents relating to this action

² Plaintiff’s application to proceed with this action *in forma pauperis* was previously granted by the Court. Dkt. No. 4 at 5.

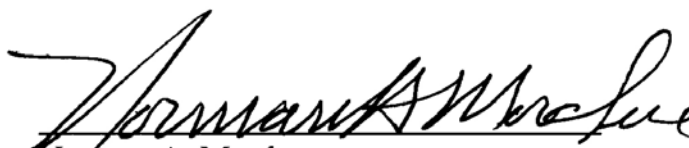
be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the Court or the Clerk shall be accompanied by a certificate setting forth the date a true and correct copy of it was mailed to all opposing parties or their counsel. Any letter or other document received by the Clerk or the Court which does not include a proper certificate of service is to be returned without processing.**

Plaintiff shall comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. Motions must comply with Local Rule 7.1 of the Northern District of New York and are to be made returnable before the assigned Magistrate Judge on any business day with proper allowance for notice as required by the Rules. **Plaintiff must promptly notify the Clerk's Office of any change in his address; his failure to do so will result in the dismissal of this action.** All motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court, and it is further

ORDERED, that the Clerk serve a copy of this Order on plaintiff by regular mail.

IT IS SO ORDERED.

Dated: June 9, 2005
Syracuse, New York


Norman A. Mordue
U.S. District Judge